

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 170)

UNION PACIFIC RAILROAD COMPANY – ABANDONMENT – IN POLK COUNTY, IA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: January 30, 2002

By decision served on January 16, 2002, the Board, under 49 U.S.C. 10903, granted the abandonment by Union Pacific Railroad Company (UP), of a 3.72-mile line of railroad known as the Bell Industrial Lead extending from milepost 221.10 near SE 18th Street to milepost 217.38 near SW 30th Street in Des Moines, Polk County, IA (the line), subject to employee protective, environmental and historic conditions. The abandonment was scheduled to become effective on February 15, 2002, unless an offer of financial assistance (OFA) was filed by January 25, 2002.

On January 25, 2002, Mid-America Railroad, L.L.C. (MAR), a wholly owned subsidiary of Mid-America Development Company, timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27, stating that it has more than sufficient financial resources to meet its obligations and that it seeks to purchase the entire line¹ for \$5,000. MAR explains the disparity between its offering price and UP's estimated net liquidation value for the line (approximately \$1.6 million, which includes \$1.5 million for real estate and the remainder for the track and track materials).

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981).

On January 29, 2002, UP filed by facsimile a reply to MAR's OFA. UP asks the Board to reject MAR's offer, arguing that MAR's mere statement that it can meet its financial obligations does not demonstrate that it is financially responsible as required by 49 CFR 1152.27(c). Rather, UP contends that MAR should have submitted concrete financial evidence or information such as past, current, or pro forma income statements, balance sheets, cash flow statements, financial statements, or letters of credit. In addition, UP argues that MAR has not provided any evidence that it will be able to sustain operations for the required time period of 2 years, a necessary component to showing financial responsibility. See 49 U.S.C. 10904(f)(4)(A).

MAR has not made the required demonstration that it is financially responsible. MAR's

¹ While describing the line as extending between the same mileposts as outlined above, MAR lists the milage as 3.63 miles.

statement of financial responsibility is a mere assertion unsupported by concrete evidence and, therefore, fails to demonstrate that MAR has the financial resources to fulfill its proposed contractual obligations as required by the Board's regulations. Accordingly, the OFA will be rejected.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. MAR's Offer of Financial Assistance is rejected.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary